

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

OUSSAMA JAWAD BECHIR,

Defendant-Appellee.

UNPUBLISHED

March 18, 2003

No. 239070

Wayne Circuit Court

LC No. 01-008251

Before: Griffin, P.J., and Neff and Gage, JJ.

PER CURIAM.

The defendant was charged with felon in possession of a firearm, MCL 750.224f, and possession of marijuana, MCL 333.7403(2)(d), after police searched his home pursuant to a warrant. The circuit court granted defendant's motion to suppress evidence, finding that the affidavit in support of the warrant was insufficient to establish probable cause and dismissed the case. The prosecutor appeals as of right and we reverse.

The trial court's ruling on a motion to suppress is reviewed de novo on appeal. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). When reviewing a magistrate's conclusion that probable cause to search existed, this Court does not review the matter de novo or apply an abuse of discretion standard. *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). Paying deference to the magistrate's determination that probable cause did exist, this Court considers only whether the actual facts and circumstances presented to the magistrate would permit a reasonably cautious person to conclude that there was a substantial basis for the finding of probable cause. *People v Sloan*, 450 Mich 160, 168-169; 538 NW2d 380 (1995), overruled on other grounds by *People v Wager*, 460 Mich 118, 123-124; 594 NW2d 487 (1999).

Issuance of a search warrant must be based on probable cause. MCL 780.651(1). "A magistrate can consider only the information in the affidavit made before him in determining whether or not probable cause exists to issue a search warrant." *People v Sundling*, 153 Mich App 277, 285-286; 395 NW2d 308 (1986). "Probable cause to issue a search warrant exists where there is a 'substantial basis' for inferring a 'fair probability' that contraband or evidence of a crime will be found in a particular place." *People v Kazmierczak*, 461 Mich 411, 417-418; 605 NW2d 667 (2000). The "search warrant and the underlying affidavit are to be read in a common-sense and realistic manner." *Russo*, *supra* at 604.

The affidavit stated that in response to an anonymous tip that there was narcotics activity at defendant's house, the police undertook an investigation. The affiant stated that during that investigation, the police learned defendant had a prior conviction for possession of marijuana. They also confiscated trash set out in front of defendant's house in which they found discarded marijuana stems and seeds and a document with defendant's address on it. The document provided a nexus between the trash and defendant's house and the marijuana stems and seeds plus defendant's prior controlled substance conviction provided probable cause to believe that marijuana would be found inside the house. *People v Thivierge*, 174 Mich App 258, 260; 435 NW2d 446 (1988); *State v Johnson*, 531 NW2d 275, 278 (ND, 1995); *State v Brown*, 20 Ohio App 3d 36, 38-39; 484 NE2d 215 (1984). Because the investigation verified the informant's claim that there was narcotics activity at defendant's house, further information about the informant's credibility or reliability was unnecessary. *People v Levine*, 461 Mich 172, 177-178; 600 NW2d 622 (1999); *People v Harris*, 191 Mich App 422, 425-426; 479 NW2d 6 (1991).

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Hilda R. Gage